



Indiana County Courhouses

The Indiana Prosecutor

IPAC WINTER CONFERENCE AGENDA SET

It's not too early to put the IPAC Winter Conference on the calendar. The agenda has been set and plans are well underway for this year's conference to be held at the Sheraton Hotel at Keystone at the Crossing on the north-side of Indianapolis. The conference will begin with a Board Meeting at 2:00 p.m. on Sunday, December 4 and will conclude at 12:30 p.m. on Wednesday, December 7. Among the topics to be addressed at this year's conference: "Realities of Electronic Recording of Interrogations" and "Why Innocent People Confess" and "What We Can Do About It." On the second day of the conference, Louisiana Assistant District Attorney Cliff Strider will discuss the CSI Effect on Criminal Prosecutions. Following that presentation, Scott Newman and Kristina Korobov of Strand Analytical Labs will present information on the use of DNA evidence in the courtroom.

In addition to these keynote speakers, there will be a traffic law update by Traffic Resource Prosecutor Joel Hand, a one-hour ethics presentation, an update from the Attorney General's Office and Steve Johnson and Becky McClure's recent decisions update.

The dinner speaker at this year's conference banquet on Monday night, December 5, will be Kevin Lyons, Peoria County (Illinois) State's Attorney. Lyons has been a speaker at previous IPAC Conferences. This year, plan to be entertained by Lyons' anecdotes and stories relating to his life as a prosecutor. ❖

NAC ANNOUNCES WINTER SCHEDULE—APPLY NOW

The National District Attorneys Association has announced its schedule of courses to be offered in early 2006 at the Ernest F. Hollings National Advocacy Center in Columbia, South Carolina. Trial Advocacy I continues to be a course in great demand and will be offered at the Center three times in February and March.

In January, a sexual assault trial advocacy course is also scheduled. This training event will focus heavily on overcoming common defenses proffered in sexual assault cases. Attendees of this trial ad course will also participate in voir dire, opening statement, direct and cross-examination exercises. Other trial advocacy related courses include a course focusing on the art of cross-examination and a course designed to enhance the attendee's jury selection skills.

In February, there is a course especially designed for newly hired prosecutors. This prosecutor "Bootcamp" focuses on the varied duties of a prosecutor with special emphasis on their ethical and professional obligations.

To be considered for a course at the Advocacy Center, prosecutors need only complete an NDAA course application form. If selected to attend one of the scheduled courses, transportation to and from the Advocacy Center is provided at no cost to the student. Registrants stay in guest rooms in the Advocacy Center and breakfast and lunch are provided there also. Dinner costs are reimbursed at the federal *per diem* rate.

A copy of the Advocacy Center's Winter Course Schedule is included with the September edition of *The Indiana Prosecutor*. ❖

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Recent Decisions Update

Indiana



- **“WHERE DO WE STAND?” - SEIZING AND SEARCHING TRASH**

- ▶ ***Crook v. State*, 827 N.E.2d 643 (Ind. Ct. App. 5/24/05)**
- ▶ ***Edwards v. State*, 832 N.E. 2d 1072 (Ind. Ct. App. 8/17/05)**

In March, 2005, the Indiana Supreme Court addressed the issue of trash seizures and searches in Indiana. In this March 24 opinion, the Supreme Court held that a two-fold review of the “totality of the circumstances” is required. Both the degree of the seizure’s intrusion into the subject’s ordinary activities and the basis upon which the officer selected the subject of the search and seizure are required in determining whether the search is “reasonable” as required by Art. I. Section 11 of the Indiana Constitution.

In order for a search or seizure of trash to be reasonable, the *Litchfield* Court said, trash must be retrieved in substantially the same manner as that utilized by the regular trash collector. Further, the Court instructed, police officers need to ensure that they do not cause a disturbance or create the appearance of a police raid of the residence when they seize trash from a suspect’s property.

As for the “reasonableness” of the initial decision to seize the trash, the Court held that articulable individualized suspicion, essentially the same as that required for a “*Terry* stop, is required to justify the seizure of trash. Random searches or searches of those individuals whom the officers hope to find in possession of incriminating evidence is not reasonable the Court concluded.

Since *Litchfield*, the Indiana Court of Appeals has published two trash seizure cases. Interestingly, although the facts of the two cases are significantly similar, in one case the Court concluded that the evidence should have been suppressed. In the other, the Court reached the opposite conclusion.

Crook v. State

Police received an anonymous tip that Samuel Crook was involved in illegal drug activity in his Logansport home. The trash seized was in trash receptacles between the sidewalk and the street in front of Crook’s residence. Trash was collected from that location on four separate occasions over the period of approximately 2 months in late 2002. In each instance, at least one of the bags taken was found to contain marijuana. The state trooper who seized the trash applied

for and obtained a search warrant for Crook’s home. Inside the residence, officers found a shoebox containing partially burnt rolling papers, seeds and a green plant-like substance that proved to be marijuana.

The Court of Appeals concluded that the anonymous call advising of Crook’s involvement with drugs, without more, was not enough to constitute the reasonable suspicion necessary to search Crook’s garbage. The items found in the trash formed the basis of the request for a search warrant for Crook’s house. The Court held that the evidence against Crook should have been suppressed.

Edwards v. State

Three months after *Crook*, the same panel of the Court of Appeals reviewed the case of Scott Edwards. The facts of the Edwards’ case are strikingly similar to those of the *Crook* case. The Hamilton County Sheriff’s Department took trash from in front of Edwards’ home in November, 2003, after receiving information from a confidential informant that Edwards was dealing drugs at that location. In the trash officers found what they believed to be evidence of drug crimes. They applied for and received a search warrant for Edwards’ home. Inside the house they found, among other things, 1/4 pound of marijuana and \$15,000 in cash.

Again, the Court of Appeals determined that the tip received was lacking in indicia of reliability and that the credibility of the CI had not been established. This information, therefore, was inadequate to support the reasonable suspicion necessary to justify the search of Edwards’ trash under *Litchfield*.

The Court went on to say, however, that under the state of the law as it existed at the time of the search of Edwards’ trash, the search was not unreasonable. The marijuana was, therefore, properly discovered evidence. Probable cause to support the issuance of the search warrant was sufficient. The Court held that the evidence against Edwards should not have been suppressed.

After reading the *Crook* opinion, Indiana prosecutors might well have thought that they had no alternative but to dismiss “trash cases” if they could not prove the existence of a reasonable, articulable suspicion to support an officer’s decision to seize the trash searched. A reading of *Edwards*, however, suggests that, if the proper arguments are made, evidence found in trash seized prior to March 24, 2005, may provide probable cause needed for a search warrant absent that reasonable articulable suspicion *Litchfield* now requires. ❖